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OFFICES IN:  
MANCHESTER  
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May 6, 2004

Air Resources Council  
c/o Michael Sclafani, Clerk  
29 Hazen Drive  
PO BOX 95  
Concord, NH 03302-0095

**RE: Docket No. 04-04**

Dear Mr. Sclafani:

On behalf of Wheelabrator Claremont Company, L.P. I enclose for filing with the Air Resources Council our Objection to Motion for Reconsideration and Motion to Supplement Record.

Yours sincerely,

**COPY**

Gregory H. Smith

GHS:cb  
Enclosures

Before The  
N.H. Air Resources Council  
Concord, N.H. 03301

Application of:

Wheelabrator Claremont Company, L.P.  
Permit No. TV-OP-050

Docket No. 04-04

Objection To Motion For Reconsideration And  
Motion To Supplement Record

In accordance with the N.H. Code of Administrative Rules Env-AC 205.01, Wheelabrator Claremont Company, L.P. ("Wheelabrator") hereby objects to the Motion for Reconsideration and Motion to Supplement Record (the "Motion") filed by Katherine Lajoie for Working on Waste ("Appellant"). The Motion fails to raise any issues that can provide the legal basis for a hearing, notwithstanding Appellant's attempts to cure the previously filed Notice of Appeal (the "Notice") dated February 9, 2004 which the Council found to be defective. Therefore, Wheelabrator respectfully requests that the Council dismiss the Notice of Appeal without further proceedings.

**Procedural History**

1. The original Notice and Motion seek to appeal a decision by the Air Resources Division ("ARD") issuing a Title V Permit to Wheelabrator. In a Decision and Order dated March 25, 2004, the Council dismissed the Petition finding that "the Appellant lacks sufficient standing in this matter," and noting that "[s]everal items required by . . . Env-AC 206.03(b) are deficient in the Appellants Notice of Appeal." The Motion fails to correct those deficiencies and as is clear from the allegations in Appellant's filings, Appellant fails to provide a legal basis for a hearing or any relief on the permit decision.<sup>1</sup>

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<sup>1</sup> The Council's March 25, 2004 Decision and Order dismissed Appellant's Notice of Appeal. Thus, this matter has not been docketed for hearing and facts relating to ARD's permit decision are not at issue. By filing this objection, Wheelabrator is not waiving any rights to contest facts germane to the permit decision in the event that the Council accepts the Motion and Notice of Appeal of the permit decision.

**Appellant Fails To Establish A Basis For Appeal Of ARD's Permit Decision**

2. Appellant bases its appeal on an objection to the issuance of the Title V permit, although it concedes that the permit conforms to the requirements of the regulations. Appellant claims the Title V permit should be denied because it “impedes the broad discussion necessary to move toward safe and equitable solid waste management in Sullivan County.” Motion, page 3. Put another way, Appellant seeks denial of the Title V permit even though Wheelabrator complies with the applicable emissions standards because according to Appellant, “focus” on emissions standards as the basis for permit issuance does not address allegedly relevant “economic and social values.” *Id.* Citing only the NH Constitution (Articles 1, 2, 3 and 38) and the legislative *Declaration of Policy and Purpose* (RSA 125-C:1).

3. The claims alleged by Appellant are not a legally valid basis for an Appeal before the Council of a Title V permit decision. Constitutional issues are beyond the Council's purview and the Legislature's policy statement does not provide actionable rights for appeal of a Title V permit decision. By its own rules, ARD's review of a Title V permit application looks only “to ensure compliance” with the applicable emissions standards and requirements. Env-A 609.10. Persons challenging an application “have the burden of moving forward with evidence or argument sufficient to establish a *prima facie* case for noncompliance with one or more applicable standards.” Notice of Hearing; Docket 95-01, Application of Wheelabrator, 11/20/95.

4. No rational interpretation of Appellant's claims can support a valid Appeal. Appellant clearly states that its primary grievance with the permit decision is that “the only factor considered for issuance of the Title V Permit is whether Wheelabrator

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Wheelabrator specifically reserves the right to contest any relevant facts should the Council determine to accept the Notice of Appeal.

complies with air emissions standards.” Id. By essentially conceding that ARD properly implemented its Title V charge “to ensure compliance” with applicable standards, Appellant makes it unconditionally clear there is no merit to the Appeal. Accordingly, the Appeal should be dismissed.

Wherefore, Wheelabrator respectfully requests the Council Dismiss the Appeal.

Respectfully submitted,

Wheelabrator Claremont Company, L.P.

By Its Attorneys,

McLANE, GRAF, RAULERSON & MIDDLETON,  
Professional Association  
15 North Main Street  
Concord, NH 03301-1915

By

Gregory H. Smith

**CERTIFICATE OF SERVICE**

I hereby certify that I have, on this 6th day of May, 2004, delivered an original and 15 copies of the foregoing Objection to Motion for Reconsideration and Motion to Supplement Record to the Chair of the New Hampshire Air Resources Council c/o Council Clerk, Michael Sclafani and, by first class mail, to Katherine Lajoie.

Gregory H. Smith